



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-848
Third Sunset Review
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March 3, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Third Sunset Review of the Antidumping Duty Order on
Freshwater Crawfish Tail Meat from the People's Republic of
China

Summary

In the sunset review of the antidumping duty order covering freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC), the Crawfish Processors Alliance (the domestic interested party) submitted a substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

Background

On November 1, 2013, the Department of Commerce (the Department) published the notice of initiation of the sunset review of the antidumping duty order on crawfish from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c)(2).¹ On November 7, 2013, pursuant to 19 CFR 351.218(d)(1), the Department received a timely and complete notice of intent to participate in the sunset review from the domestic interested party.² On December 2, 2013, pursuant to 19 CFR 351.218(d)(3), the domestic interested party filed a timely and adequate substantive response within 30 days after the date of publication of the

¹ See *Initiation of Five-Year ("Sunset") Review*, 78 FR 65614 (November 1, 2013) (*Notice of Initiation*).

² See Letter from the domestic interested party, "Freshwater Crawfish Tail Meat from the People's Republic of China: Entry of Appearance, APO Application, and Notice of Intent to Participate" dated November 7, 2013.



*Notice of Initiation.*³ The Department received no substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on crawfish from the PRC.

History of the Order

On August 1, 1997, the Department published its final determination in the less than fair value (LTFV) investigation of crawfish from the PRC.⁴ On September 15, 1997, the Department published an antidumping duty order on imports of crawfish from the PRC.⁵ The Department determined the following weighted-average percentage dumping margins in the LTFV investigation:

China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp.	119.39
Huaiyin Foreign Trade Corp.	91.50
Yancheng Foreign Trade Corp.	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.	122.92
Yancheng Baolong Aquatic Foods Co., Ltd.	122.92
Huaiyin Ningtai Fisheries Co., Ltd.	122.92
Nantong Delu Aquatic Food Co., Ltd.	122.92
China-wide Rate	201.63

On December 6, 2002, the Department published the *First Sunset Review* of the *Order* where it determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.⁶ On August 1, 2003, the International Trade Commission (ITC) determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁷ On August 13, 2003, the Department published the continuation of the *Order*.⁸

On November 5, 2008, the Department published the *Second Sunset Review* of the *Order* where it determined that revocation of the *Order* would be likely to lead to continuation or recurrence

³ See Letter from the domestic interested party, “Freshwater Crawfish Tail Meat from the People’s Republic of China: Substantive Response to Notice of Initiation,” dated December 2, 2013 (Substantive Response).

⁴ See *Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People’s Republic of China*, 62 FR 41347 (August 1, 1997), as amended by the *Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People’s Republic of China*, 62 FR 48218 (September 15, 1997) (collectively, the *Order*).

⁵ See *Order*.

⁶ See *Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People’s Republic of China*, 67 FR 72645 (December 6, 2002), and accompanying Issues and Decision Memorandum (*First Sunset Review*).

⁷ See *Crawfish Tail Meat from China*, Investigation No. 731-TA-752 (Review), 68 FR 45276 (ITC August 1, 2003).

⁸ See *Continuation of Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People’s Republic of China*, 68 FR 48340 (August 13, 2003) (*First Notice of Continuation*).

of dumping.⁹ On December 1, 2008, the ITC determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁰ On December 11, 2008, the Department published the continuation of the *Order*.¹¹

Since the publication of the *Second Sunset Review* of the *Order* on November 5, 2008, the Department completed several administrative and new shipper reviews.¹² There have been no changed circumstances reviews of the *Order*. The Department issued two scope rulings with respect to the *Order*.¹³

The Department is currently conducting administrative reviews of the *Order* for the period September 1, 2011, through August 31, 2012, and for the period September 1, 2012, through August 31, 2013. The Department published the preliminary results of review for the period September 1, 2011, through August 31, 2012, on October 3, 2013.¹⁴ The Department initiated the review for the period September 1, 2012, through August 31, 2013, on November 8, 2013.¹⁵ The Department is also currently conducting three new shipper reviews of the *Order*. The Department published the preliminary results of new shipper review for one of these reviews in the same notice as the preliminary results of review for the period September 1, 2011, through August 31, 2012. The Department initiated the other two new shipper reviews on November 14, 2013.¹⁶

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether

⁹ See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 73 FR 65832 (November 5, 2008), and accompanying Issues and Decision Memorandum (*Second Sunset Review*).

¹⁰ See *Crawfish Tail Meat from China*, Investigation No. 731-TA-752 (Second Review), 73 FR 72833 (ITC December 1, 2008).

¹¹ See *Continuation of Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China*, 73 FR 75392 (December 11, 2008) (*Second Notice of Continuation*).

¹² See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 74 FR 6571 (February 10, 2009), *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 74 FR 52180 (October 9, 2009), *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010), *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529 (April 10, 2012), and *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission; 2010-2011*, 78 FR 22228 (April 15, 2013).

¹³ See *Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005); *Notice of Scope Rulings*, 73 FR 9293 (February 20, 2008).

¹⁴ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 61331 (October 3, 2013).

¹⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104 (November 8, 2013).

¹⁶ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 78 FR 68411 (November 14, 2013).

frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. On February 10, 2012, the Department added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹⁷ In addition, as a base period for import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.¹⁸

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an

¹⁷ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90.

¹⁸ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

order in place.¹⁹ However, the Department may use a rate from a more recent review where the dumping margin increased, as this rate may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).²⁰ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value.

In the *Final Modification for Reviews*, the Department announced that it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.²¹ The Department also noted that "*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations."²² The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the "most extraordinary circumstances" provided for in its regulations.²³

Below we address the comments submitted by the domestic interested party.

1. Likelihood of continuation or recurrence of dumping

Comment:

The domestic interested party contends that, in accordance with sections 751(c)(1) and 752(c)(1)(A) and (B) of the Act, the Department should find that revoking the order on imports of crawfish from the PRC would likely lead to the continuation or recurrence of dumping in the United States. According to the domestic interested party, evidence of continuous dumping is illustrated by the dumping margins found in the 14 administrative reviews conducted by the Department.²⁴ Specifically, the domestic interested party states that the China-wide rate found in each of the administrative reviews completed by the Department has been in excess of 200 percent, and the Department repeatedly has found dumping above *de minimis* levels, both after the issuance of the *Order* and after the December 11, 2008 *Second Notice of Continuation*.

The domestic interested party contends that the fact that dumping of the subject merchandise was not eliminated and imports of the subject merchandise did not cease after issuance of the antidumping duty order supports the likelihood that dumping will continue or recur if the order is

¹⁹ See SAA at 890; see, *e.g.*, *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

²⁰ See SAA at 890-91.

²¹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

²² *Id.* (emphasis added).

²³ *Id.*

²⁴ See Substantive Response at 14-17.

lifted. Accordingly, the domestic interested party asserts, the Department is not required to evaluate the volume of imports before and after the issuance of the antidumping duty order.

Department's Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determination of likelihood of continuation or recurrence will be made on an order-wide basis for each case.²⁵ In addition, the Department will normally determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.²⁶

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent proceedings. As stated above, in the investigation, the Department found dumping margins of 156.77 percent for China Everbright Trading Company, 119.39 percent for Binzhou Prefecture Foodstuffs Import Export Corp., 91.50 percent for Huaiyin Foreign Trade Corp., 108.05 percent for Yancheng Foreign Trade Corp., 122.92 percent for Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp., Yancheng Baolong Aquatic Foods Co., Ltd., Huaiyin Ningtai Fisheries Co., Ltd., and Nantong Delu Aquatic Food Co., Ltd., and 201.63 percent for the PRC-wide entity.²⁷ None of these rates were affected by zeroing methodology as no offsets were denied.

In addition, in the final results for the 2008-2009 administrative review, China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean), and Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), were assigned dumping margins of 18.87 percent, 41.92 percent, and 5.39 percent, respectively, which were not based on zeroing.²⁸ Also, in the final results for the 2009-2010 administrative review, Xiping Opeck Food Co., Ltd. (Xiping Opeck), was assigned a dumping margin of 70.12 percent, which was not affected by zeroing.²⁹ In the *Final Modification for Reviews*, the Department announced that in sunset reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.³⁰ Accordingly, the Department is not relying on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent. The existence of the aforementioned dumping margins in the 2008-09 and 2009-2010 administrative reviews, which were not based on zeroing, demonstrates that the

²⁵ See SAA at 879 and House Report at 56.

²⁶ See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

²⁷ See *Order*, 62 FR at 41358.

²⁸ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337, 79338 (December 20, 2010).

²⁹ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529, 21530 (April 10, 2012).

³⁰ See *Final Modification for Reviews*.

dumping continued at an above *de minimis* level after the issuance of the antidumping duty order.

Pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the antidumping duty order is likely to lead to continuation or recurrence of dumping. As discussed above, it is the Department's practice to compare the volume of imports for the one-year period preceding the initiation of the LTFV investigation to the volume of imports during the period of review. Since the issuance of the *Order*, import volumes of crawfish into the United States from the PRC have increased significantly and remain above pre-investigation levels.

Thus, dumping has continued at above *de minimis* levels with the discipline of the order in place, and those weighted-average dumping margins support a determination that dumping will continue or recur if the *Order* were to be revoked.³¹

2. Magnitude of the Margins Likely to Prevail

Comment:

The domestic interested party requests that, with the exception of instances where duty absorption applies, the Department report to the ITC the company-specific margins and the PRC-wide rate determined in the LTFV investigation. In addition, the domestic interested party requests that the Department report the PRC-wide rate from the LTFV investigation for all other shippers which established eligibility for separate rates in reviews conducted after the LTFV investigation and where duty absorption does not apply.

The domestic interested party contends that the Department considers duty absorption to be relevant only to the first sunset review of an order. According to the domestic interested party, the Department has not made any findings regarding duty absorption under the *Order* since 2001. Accordingly, the domestic interested party contends that duty absorption does not appear to be relevant to the Department's deliberations in this sunset review.

Department's Position:

Normally, the Department will provide to the ITC the company-specific weighted-average dumping margin from the investigation for each company.³² For companies not individually examined, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the all-others rate from the investigation. However, for the PRC, which the Department considers to be a nonmarket economy (NME) under section 771(18) of the Act, the Department does not have an all-others rate. Thus, in NME cases, instead of an all-others' rate, the Department uses separate rates for non-examined

³¹ See *Final Modification for Reviews*, 77 FR at 8103; SAA at 890 (explaining that "{i}f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed").

³² See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

respondents as well as an established rate which it applies to all exporters that have not established their eligibility for a separate rate.³³

The Department prefers to select a margin from the investigation because it is the only calculated rate that reflects the behavior of producers or exporters without the discipline of an order or suspension agreement in place.³⁴ Under certain circumstances, however, the Department may select a more recent rate to report to the ITC. As explained above, in accordance with the *Final Modification for Reviews*, the Department will not rely on weighted-average dumping margins that were calculated using the WTO-inconsistent methodology.³⁵

In the LTFV Investigation, China Everbright Trading Company, Binzhou Prefecture Foodstuffs Import Export Corp., Huaiyin Foreign Trade Corp., Yancheng Foreign Trade Corp., Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp., Yancheng Baolong Aquatic Foods Co., Ltd., Huaiyin Ningtai Fisheries Co., Ltd., and Nantong Delu Aquatic Food Co., Ltd., were assigned dumping margins.³⁶ The Department notes that none of these margins were affected by zeroing and are consistent with the *Final Modification for Reviews*. Accordingly, the Department has determined that these rates do not need to be recalculated and will be reported to the ITC without modification.

The dumping margin for the PRC-wide entity in the antidumping investigation was based on the dumping margin from the petition and, therefore, does not include zeroing and is consistent with the *Final Modification for Reviews*. Therefore, the Department has determined that the margin for the PRC-wide entity originally calculated in the LTFV investigation does not need to be recalculated and will be reported to the ITC without modification.

We determine that it is not appropriate, in this third sunset review, to report to the ITC our duty-absorption findings from the first sunset-review period. The Department's duty-absorption findings in the second and fourth administrative reviews correspond to the first sunset-review period (*i.e.*, 1997-2002). There are no duty-absorption findings that correspond to the third sunset-review period (*i.e.*, 2007-2012). Moreover, the Court of Appeals for the Federal Circuit (CAFC) has held that the statute only authorizes the Department to conduct duty-absorption inquiries in the second and fourth administrative reviews after publication of the order and has rejected the idea that the Department can conduct duty-absorption inquiries beyond the initial sunset-review period.³⁷ Therefore, in light of the CAFC's decision in *FAG Italia*, because this is the third sunset review, we determine that it is inappropriate to make any adjustments to account for our findings on duty absorption from the second and fourth administrative reviews.

³³ See *Paper Clips from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 76 FR 26242 (May 6, 2011), and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.107(d).

³⁴ See *Eveready Battery*, 77 F. Supp. 2d at 1333; see also SAA at 890.

³⁵ See *Final Modification for Reviews*, 77 FR at 8103.

³⁶ See *Order*, 62 FR at 41358.

³⁷ See *FAG Italia S.p.A. and FAG Bearings Corporation and SKF USA Inc. and SKF Industries S.p.A. v. United States and The Torrington Company*, 291 F.3d 806, at 815 n.3 (CAFC 2002) (*FAG Italia*).

Final Results of the Review

We determine that revocation of the antidumping duty order on crawfish from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

<u>Producer/Exporter</u>	<u>Weighted-Average Margin (Percent)</u>
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp.	119.39
Huaiyin Foreign Trade Corp.	91.50
Yancheng Foreign Trade Corp.	108.05
All other exporters with a separate rate	122.92
All other exporters which are part of the PRC-wide entity	201.63

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.

Agree ✓ Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 February 2017
Date

Attachment

ATTACHMENT

Crawfish: First Unit of Quantity by Country Name, HTS Number and First Unit of Quantity for PRC

U.S. Imports for Consumption

Annual Data

Country	HTS Number	Quantity Description	1996	2008	2009	2010	2011	2012	2013 Jan - Nov
			<i>In Actual Units of Quantity</i>						
China	306190010	kilograms	1,266,041	1,504,611	488,504	2,316,752	683,133	2,871,396	3,617,696
.	306290000	kilograms	26,057	114,000	96,858	0	0	0	0
.	1605401010	kilograms	0	939,346	5,959,354	5,847,810	1,283,449	5,673,258	4,243,550
.	1605401090	kilograms	0	3,783,512	3,175,181	7,766,912	1,620,209	4,421,735	6,802,261
Subtotal China			1,292,098	6,341,469	9,719,897	15,931,474	3,586,791	12,966,389	14,663,507

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.